

(27,043)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 957.

FREDERICK J. MACLEOD AND EVERETT E. STONE, CON-  
STITUTING THE PUBLIC SERVICE COMMISSION OF  
MASSACHUSETTS, PETITIONERS,

VS.

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDI-  
CIAL COURT OF THE STATE OF MASSACHUSETTS.

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1 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court, Suffolk County. In Equity.

PUBLIC SERVICE COMMISSION

v.

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY.

*Reservation.*

At the request of the parties I reserve this case for the determination of the Full Court upon the bill and the answer.

CHARLES A. DE COURCY,  
J. S. J. C.

February 12, 1919.

*Bill of Complaint.*

1. And now come your complainants, Frederick J. Macleod, Everett E. Stone, and Joseph B. Eastman, and allege that this bill of complaint is brought by them in their official capacity as members of the Public Service Commission of the Commonwealth of Massachusetts.

2. And your complainants say that the New England Telephone and Telegraph Company is a corporation organized under the laws of the State of New York and having a usual place of business in this Commonwealth; that it is, and for a long time has been, a public-service corporation doing business in the Commonwealth as a foreign corporation engaged in the business of transmitting intelligence within the Commonwealth by electricity by means of telephone lines, including the operation of all conveniences, appliances, instrumentalities, and equipment utilized in connection therewith and appertaining thereto.

3. And your complainants say that on or about July 31, 1918, the President of the United States, acting under a joint resolution of Congress, a copy of which is hereto annexed as Exhibit "A," took possession and assumed control of all telephone properties and systems of the United States, including the system and property of the said New England Telephone and Telegraph Company, placing said properties in the general charge and direction of the Postmaster-General of the United States; that thereupon he entrusted the direction and operation of its system and property to the New England Telephone and Telegraph Company.

4. And your complainants allege that on December 21, 1918, the New England Telephone and Telegraph Company, pursuant to the directions of the Postmaster-General, filed with the Public Service Commission of the Commonwealth, under the provisions of St. 1913,

c. 784, sec. 20, notice that, effective on January 21, 1919, it proposed to make certain changes in the telephone toll rates and practices to be charged and put into effect by it in accordance with schedules filed together with such notice; that, on January 9, 1919, said Commission, pursuant to the provisions of section 21 of said statute gave notice of a public hearing upon such proposed new schedules of rates to be held on January 17, 1919; that such hearing was duly begun on that date, the New England Telephone and Telegraph Company being represented, and then adjourned to January 30, 1919, at which time the representative of the New England Telephone and Telegraph Company was fully heard.

5. And your complainants further say that on January 20, 1919, they duly issued an order in accordance with the provisions of said section 21, suspending the taking effect of the proposed schedules of new rates until February 20, 1919, a copy of which order is hereto annexed as Exhibit "B," that this order was duly served forthwith upon the New England Telephone and Telegraph Company; that on January 31, 1919, the complainants made a report with reference to said proposed schedules of new rates, and in connection therewith entered an order requiring the New England Telephone and Telegraph Company forthwith to cancel the rates and charges stated in said proposed schedules and to put in effect the rates theretofore charged. A copy of this report and order is hereto annexed as Exhibit "C."

6. And your complainants further say that, notwithstanding said order of January 20th (Exhibit "B"), the New England Telephone and Telegraph Company, on January 21, 1919, put into effect the rates stated in said proposed schedules and is now proceeding to charge the same for all service rendered by it to the public covered by said schedules, and that it intends to continue to charge said rates notwithstanding the orders of the complainants as above stated; that it denies the jurisdiction of the complainants to enter said orders or in any other manner to fix or to determine the rates to be charged by it for service between points within this Commonwealth, and claims that these orders are null and void.

7. And your complainants further say that, under the provisions of said chapter 784 of the Acts of 1913 and said joint resolution (Exhibit "A"), it is the duty of the respondent, New England Telephone and Telegraph Company, to obey the provisions of said orders, particularly said final order (Exhibit "C") entered January 31, 1919.

Wherefore, your complainants pray—

(1) That, pending the final decision herein, an interlocutory decree be entered enjoining and requiring the New England Telephone and Telegraph Company to suspend such new schedules and not to make use of the charges stated therein, so far as they affect telephone rates between points in the Commonwealth of Massachusetts, until the further order of the Court.

(2) That a final decree may be entered to the same effect.

(3) That the respondent be ordered by mandatory injunction to

comply with the aforesaid order of the Public Service Commission entered January 31, 1919.

(4) For such other and further relief as to this Honorable Court shall seem proper.

FREDERICK J. MACLEOD,  
EVERETT E. STONE,  
JOSEPH B. EASTMAN,  
*Public Service Commission of Massachusetts,*  
By HENRY C. ATTWILL,  
*Attorney-General,*  
By WM. HAROLD HITCHCOCK,  
*Assistant Attorney-General.*

I, Frederick J. Macleod, one of the petitioners in the above-entitled case, hereby certify that I have read the foregoing petition and that the statements therein contained are true to the best of my knowledge and belief, except so far as they are made upon information and belief, and that such statements I believe to be true.

FREDERICK J. MACLEOD.

4 BOSTON, MASS., February 1, 1919.

Personally appeared the above-named Frederick J. Macleod and made oath that the foregoing statement by him subscribed is true, before me.

WM. HAROLD HITCHCOCK,  
*Justice of the Peace.*

Filed February 1, 1919.

EXHIBIT "A."

*Joint Resolution*

To authorize the President, in time of war, to supervise or take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems or any part thereof and to operate the same in such manner as may be needful or desirable for the duration of the war, and to provide just compensation therefor.

1 Resolved by the Senate and House of Representatives  
2 of the United States of America in Congress assembled,  
3 That the President during the continuance of the present war  
4 is authorized and empowered, whenever he shall deem it  
5 necessary for the national security or defense, to supervise  
6 or to take possession and assume control of any telegraph,  
7 telephone, marine cable, or radio system or systems, or any  
8 part thereof, and to operate the same in such manner as may  
9 be needful or desirable for the duration of the war, which  
10 supervision, possession, control, or operation shall not extend  
11 beyond the date of the proclamation by the President of the  
12 exchange of ratifications of the treaty of peace: Provided,  
1 That just compensation shall be made for such supervision,

2 possession, control, or operation, to be determined by the  
3 President; and if the amount thereof, so determined by the  
4 President, is unsatisfactory to the person entitled to receive  
5 the same, such person shall be paid seventy-five per centum  
6 of the amount so determined by the President and shall be  
7 entitled to sue the United States to recover such further sum  
8 as, added to said seventy-five per centum, will make up such  
9 amount as will be just compensation therefor, in the manner  
10 provided for by section twenty-four, paragraph twenty, and

5

11 section one hundred and forty-five of the Judicial Code:  
12 Provided further, That nothing in this Act shall be construed  
13 to amend, repeal, impair, or affect existing laws or powers  
14 of the States in relation to taxation or the lawful police regu-  
15 lations of the several States, except wherein such laws,  
16 powers, or regulations may affect the transmission of Govern-  
17 ment communications, or the issue of stocks and bonds by  
18 such system or systems.

(July 16, 1918.)

EXHIBIT "B."

The Commonwealth of Massachusetts,

Public Service Commission.

January 20, 1919.

(P. S. C. 2350.)

*Notice of the New England Telephone and Telegraph Company, the Highland Telephone Company, the Providence Telephone Company of Massachusetts, and the Heath Telephone Company, of Proposed Changes in Toll Telephone Rates.*

In the matter of the proposed changes in toll telephone rates by the New England Telephone and Telegraph Company, the Highland Telephone Company, the Providence Telephone Company of Massachusetts and the Heath Telephone Company, as shown in basic toll rate schedules, filed in this office December 21, 1918, in accordance with Telegraph and Telephone Bulletin No. 22, Order 2495 of the Postmaster-General of the United States, effective in the Commonwealth of Massachusetts January 21, 1919, the Commission having entered upon an investigation as to the propriety of said changes,—it is

Ordered, That the operation of said schedules, so far as they affect toll telephone rates between points in the commonwealth of Massachusetts, be suspended and the use of the changes stated therein be deferred until February 20, 1919, unless otherwise ordered by the Commission.

And it is

Further ordered, That a copy of this order be filed with said

schedules at the office of the Commission and that a copy hereof be forthwith served upon the New England Telephone and Telegraph Company, the Highland Telephone Company, the Providence Telephone Company of Massachusetts, the Heath Telephone Company, and the Postmaster-General of the United States.

Attest:

(Signed)

[SEAL.]

ANDREW A. HIGHLANDS,

Secretary.

A true copy.

Attest:

(Signed)

ANDREW A. HIGHLANDS,

Secretary.

EXHIBIT "C."

The Commonwealth of Massachusetts,

Public Service Commission.

JANUARY 31, 1919.

[P. S. C. 2350.]

*Notices of Changes in Rates for Telephone Toll Service within Massachusetts in Accordance with Telegraph and Telephone Bulletin No. 22, Order No. 2495, of the Postmaster-General of the United States, Filed by the New England Telephone and Telegraph Company, the Highland Telephone Company, the Heath Telephone Company, and the Providence Telephone Company of Massachusetts.*

On July 16, 1918, Congress adopted a resolution (see Appendix A) empowering the President to take possession and assume control of telephone and telegraph properties during the war, for a period not to extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace. Under authority of this resolution, all properties of this character in the country were taken over on July 31, 1918, by virtue of a proclamation of the President dated July 22, 1918, which directed that the supervision, possession, control and operation of such telegraph and telephone systems should be exercised by and through the Postmaster-General, Albert S. Burleson.

By Order No. 1744 of the Postmaster-General, dated July 23, 1918, John C. Koons, First Assistant Postmaster-General, David J. Lewis, Commissioner, United States Tariff Commission, and William H. Lamar, Solicitor of the Post-Office Department, were appointed "a committee for the Governmental management, operation and control of the telegraph and telephone systems covered by the proclamation of the President dated July 22,



1918", the Postmaster-General being the chairman of this committee. On October 5, 1918, the proposal of the American Telephone and Telegraph Company, in behalf of itself and of the constituent companies comprising the Bell system, with respect to just compensation for the use of the properties owned by it and by these other companies during the period of Federal control was accepted by the Postmaster-General, and on October 15, 1918, the board of directors of the New England Telephone and Telegraph Company formally joined in this proposal which had thus been accepted. We are informed that similar contracts have been or are to be made with the Heath Telephone Company, the Highland Telephone Company and the Providence Telephone Company of Massachusetts.

On December 13, 1918, more than a month after the signing of the armistice, the Postmaster-General issued an order (Telegraph and Telephone Bulletin No. 22, Order No. 2495) directing that comprehensive changes in telephone toll rates be made throughout the country. On December 21, 1918, a schedule embodying these changes, in the case of toll service within the commonwealth, was filed by the New England Telephone and Telegraph Company with this Commission, effective January 21, 1919, and similar schedules were filed by the Heath Telephone Company, the Highland Telephone Company and the Providence Telephone Company of Massachusetts. On January 9, 1919, the Commission gave notice that a public hearing upon these proposed new schedules would be held on January 17, 1919, and sent a communication to the Postmaster-General (see Appendix B) stating that it could not, in good faith with the people of Massachusetts, allow the new rates to become effective with its approval until they had been shown to be just and reasonable.

At the public hearing, Matt B. Jones, then vice-president and now president of the New England Telephone and Telegraph Company, appeared for the Postmaster-General and read into the record a letter (See Appendix C) which the Commission had received from W. H. Lamar, Solicitor for the Post-Office Department, and a member of the committee for the governmental management, operation and control of the telegraph and telephone systems. The hearing continued throughout the day and upon notification that Mr. Jones wished to present additional evidence, it was adjourned until January 30, 1919, the earliest available date, the Commission announcing that the taking effect of the new schedules would be suspended, under the provisions of section 21 of chapter 784 of the Acts of 1913, pending further investigation and the decision thereon.

On January 20, 1919, an order was duly issued by the Commission suspending the taking effect of the new schedules until February 20, 1919. The Postmaster-General was forthwith notified by wire that such an order had been issued and copies were served by mail upon him and upon the companies involved. Notwithstanding this order, and in direct violation of its provisions, the rates so suspended were placed in effect on January 21, 1919, have been in effect ever since, and are in effect now. In accordance with section 28 of chapter 784 of the Acts of 1913, the Commission directed the attention of the



Attorney-General to this violation of its order, and of the law of the commonwealth, and requested him to begin at once an action or proceeding in the Supreme Judicial Court of Massachusetts in the name of the Commission for the purpose of having such violation stopped and prevented, either by mandamus or injunction. Proceedings of this nature have been instituted by the Attorney-General and are now pending.

The entire disregard by the Postmaster-General of the suspension order entered by the Commission in accordance with the laws of the commonwealth, made it clear that the primary issue to be considered is one of jurisdiction, and that it would be undesirable to undertake an extensive investigation, with a view to determining whether or not the new rates are just and reasonable, until this question is settled. The representative of the Postmaster-General in this matter, Mr. Jones, agreed with this conclusion, and in order that this issue might be raised in the most definite manner and determined promptly, he directly challenged and denied the jurisdiction of the Commission in the premises, at the continued hearing on January 30, 1919, and rested his case upon this denial and upon the letter of the Solicitor for the Post-Office Department referred to above. His action was taken, however, upon the understanding that, if the jurisdiction of the Commission should be sustained by the courts, either the Postmaster-General, or the companies if they should then be in private control, should be free without prejudice to file schedules of rates similar to those which have now been placed in effect, as we believe illegally, and submit evidence to prove their justice and reasonableness.

In the opinion of the Commission its jurisdiction in the premises, which certainly existed prior to the resolution of Congress, was preserved by that resolution. The final proviso reads as follows:

Provided, further, That nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of  
9 the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems.

There are many decisions of the United States Supreme Court indicating that the public supervision of rates charged by a public utility company is an exercise of police powers and covered by the designation, "lawful police regulations." It is obvious, also, that such supervision by this Commission in the present instance would in no way "affect the transmission of Government communications, or the issue of stocks and bonds" by the telephone companies. Nor is there anything in the history of the legislation to indicate that it was the intent of Congress to set aside or nullify the powers of the States over telephone charges. It is a matter of common knowledge that the resolution was adopted because of the danger that telegraph service would be interrupted by labor troubles, and it was clearly the desire of Congress to insure continuity of both telegraph and telephone service during the war, rather than to inaugurate, under Government auspices, revolutionary changes in methods of charging.

Under the circumstances, since the immediate question is one of jurisdiction, it is unnecessary either to describe or to discuss the new rates at any length. It may be said that, in Massachusetts and throughout the entire territory which the New England Telephone and Telegraph Company serves, it is conceded that they represent a substantial increase in charges. Attention is called also to the fact that it is stated in the letter of Solicitor Lamar (See Appendix C) that the main purpose of the new schedule is to remove the "many inconsistencies and irregularities which heretofore have existed in the toll schedules of telephone companies in many parts of the United States" and to standardize the rates from a nation-wide standpoint, so that between any two points in any part of the country they would be "exactly the same as between any two equi-distant points in any other part of the country." The effect on revenues was not "the prime consideration for the schedule," and the Postmaster-General was not advised as to the effect upon the revenues of the New England Telephone and Telegraph Company. Of this reasoning it is sufficient to say that it does not seem to the Commission by any means self-evident that the toll rates between two points in the thickly-settled territory of Massachusetts should necessarily be the same as the rates between any two equi-distant points in some dissimilar part of the country, that we know of no public demand for such a standardization, and that we are not aware of any inconsistencies or irregularities in the toll schedules which have heretofore existed in Massachusetts which have caused complaint from patrons or have been prejudicial to the proper operation of the telephone properties.

As the record is now left, however, and for the purpose of testing at once the question of jurisdiction, the Commission finds that the burden of proof imposed by section 21 of chapter 784 of the Acts of 1913, in the case of proposed changes in rates, has not been sustained by the Postmaster-General or by the companies, and that the telephone toll schedules which were in actual effect in Massachusetts prior to January 21, 1919, and which are still, as we believe, in legal effect, are just and reasonable and embody the rates which should be charged by the companies in question. An order to this effect is entered below. It is entered without prejudice to the right of any party in interest, after the question of jurisdiction has been determined, to present to the Commission further evidence as to the reasonableness either of the old or the new rates under consideration.

### *Order.*

Notices of Changes in Rates for Telephone Toll Service within Massachusetts in Accordance with Telegraph and Telephone Bulletin No. 22, Order No. 2495, of the Postmaster-General of the United States, filed by the New England Telephone and Telegraph Company, the Highland Telephone Company, the Heath Telephone Company and the Providence Telephone Company of Massachusetts.

It appearing that on December 21, 1918, the New England Telephone and Telegraph Company, the Heath Telephone Company, the

Highland Telephone Company and the Providence Telephone Company of Massachusetts issued and filed with this Commission schedules of rates for telephone toll service within the commonwealth, effective January 21, 1919, each of which was designated "Basic Toll Rate Schedule, issued in accordance with Telegraph and Telephone Bulletin No. 22, Order No. 2495 of the Postmaster-General of the United States;" that the commission entered upon an investigation concerning the justice and reasonableness of the rates proposed in said schedules, duly notifying and holding public hearings on January 17, 1919, and on January 30, 1919; and that the Commission, by an order dated January 20, 1919, entered in accordance with section 21 of chapter 784 of the Acts of 1913, suspended the taking effect of said schedules of rates until February 20, 1919, pending further investigation and the decision thereon.

It further appearing that a full investigation of the matters and things involved has been had and that the Commission, under date hereof, has made a report containing its findings of fact and of law and conclusions thereon, which said report is hereby referred to and made a part hereof,—

It is

Ordered, That the carriers respondent herein and designated in said schedules, namely, the New England Telephone and Telegraph Company, the Heath Telephone Company, the Highland Telephone Company, and the Providence Telephone Company of Massachusetts be, and they are hereby, notified to cancel forthwith the rates and charges stated in the schedules specified above and in said order of suspension, which rates and charges have been found by the Commission to be unjust and unreasonable.

It is

Further ordered, That said respondents be and they are hereby notified and required to put in force and effect forthwith, and thereafter to maintain within the commonwealth of Massachusetts, the rates and charges for telephone toll service which were in effect prior to January 21, 1919, and which are stated in the schedules now on file in the office of this Commission as the lawful rates and charges within the commonwealth for such service, which rates and charges have been found by the Commission to be just and reasonable.

It is

Further ordered, That copies of this order be filed at the office of the Commission with the schedules herein ordered to be cancelled, and that copies hereof be forthwith served upon the New England Telephone and Telegraph Company, the Heath Telephone Company, the Highland Telephone Company and the Providence Telephone Company of Massachusetts, and upon the Postmaster-General of the United States.

By the Commission,

(Signed)

ANDREW A. HIGHLANDS,

*Secretary.*

A true copy.

Attest:

\_\_\_\_\_  
*Secretary.*

## APPENDIX A.

[Appendix A is a copy of the Joint Resolution hereinbefore printed as Exhibit A, at page 4.]

## APPENDIX B.

*Letter to the Postmaster-General of the United States*

Public Service Commission,

Boston.

JANUARY 9, 1919.

Hon. Albert S. Burleson, Postmaster-General of the U. S., Washington, D. C.

DEAR SIR: On December 21, 1918, the New England Telephone and Telegraph Company filed with this Commission a basic toll rate schedule issued in accordance with your Telephone and Telegraph Bulletin No. 22, Order No. 2495, and effective January 21, 1919. This schedule provides for so large and so general an increase in charges within Massachusetts that the Commission has felt that it ought not to permit the new rates to go into effect, with its approval, until cause has been shown. For this reason it has set the matter down for public hearing on Friday, January 17, 1919, at 10:30 A. M., the hearing to be held at the office of the Commission at No. 1 Beacon Street, Boston, in order that an opportunity may be given to representatives of the company or to your own representatives to explain the reasons for the change. We have been reluctant to take this step, for the Commission has been desirous of helping you in the successful administration of the telephone properties in every way that we could. The increases proposed, however, are very substantial and it has not seemed to the Commission that it could, in good faith with the people of Massachusetts, give its sanction to the new schedule until it had been shown to be just and reasonable.

Very truly yours,

(Signed) FRED J. MACLEOD,  
Chairman.

## APPENDIX C.

*Letter of the Solicitor of the Post Office Department.*

Post Office Department,

Office of the Solicitor.

WASHINGTON, January 15, 1919.

Hon. Fred J. Macleod, Chairman, Public Service Commission of Massachusetts, 1 Beacon Street, Boston, Massachusetts.

DEAR SIR: I beg to acknowledge receipt of your letter of January 9, 1919, addressed to the Postmaster General, and advising that your

commission will hold a hearing on Friday, January 17, 1919, in the matter of the toll rates prescribed in Bulletin No. 22, Order No. 2495, issued by the Postmaster General on December 13, 1918, which was duly filed by the New England Telephone and Telegraph Company with your commission to become effective January 21, 1919.

While the New England Company, which, as you are aware, is now and ever since August 1, 1918 has been operating its properties for the account of the Government and not for the benefit of its stockholders, will represent the Postmaster General at your hearing and present the case on its merits, it may not be amiss for me to say that the main purpose of said schedule of rates as embodied in Bulletin No. 22 was to remove the many inconsistencies and irregularities which heretofore have existed in the toll schedules of telephone companies in many parts of the United States, and to treat the subject from a nation-wide standpoint so that the rates for toll and long distance service between any two points in any part of the country would be exactly the same as between any two equidistant points in any other part of the country. The particular rates in this schedule in Bulletin No. 22, as well as the general basis of the structure, were the result of an exhaustive study covering several months by the committee on standardization of rates in this Department, and the general scheme represents, we believe, the best effort that has been devised to place this vital matter of the telephone toll service of the entire country on a unified and scientific basis.

Owing to the multitude of irregularities and inconsistencies heretofore obtaining in the toll schedules of the different companies, which grew up over a long period of years by reason of local conditions and the varying views of telephone officials, each of whom saw the proposition from the standpoint of his own particular company, it is obvious that any scheme of standardizing the rates from a nation-wide standpoint must result in the lowering of rates in some places and the raising of rates in others, with the corresponding inevitable effect of increasing or diminishing the revenues in particular localities, but such effect on revenues was not the prime consideration for the schedule, and as a matter of fact the Postmaster General is not advised as to what may be the effect on the revenues of the New England Company in Massachusetts.

It appeared to be the consensus of opinion of those best versed in telephone affairs that there should be a unification and standardization of telephone rates throughout the country, and that the first step in such a problem was the establishment of a unified and comprehensive schedule of rates for toll and long distance service, and the schedule in question embodies the effort to make that first step.

As in the view of the Postmaster General the prime purpose of this schedule is to place the toll service throughout the entire country on the same basis, and, inasmuch as the telephone using public in Massachusetts will pay thereunder for such service exactly the same rates as will the telephone using public in every other state of the Union for similar service, leaving no room for there being any question of discrimination against the telephone using public of Massachusetts, it would seem unfortunate that any attempt should

be made at this time, in advance of actual experience of operations under this new schedule, to reach a conclusion by estimates and opinions as to what the actual effect would be on the revenues from such service in any particular state. For, it would seem obvious, that no national, comprehensive scheme of rates could be made effective in any reasonable period of years, if investigations and tests as to probable revenue results, from the standpoint of different and various theories, must be made in each particular state of the Union, in advance of actual application of the scheme.

The Postmaster General will welcome any assistance which your commission can give in testing the actual operation of the schedule and in securing data with respect thereto in order to determine later whether any modifications of said schedule should be made, as well as to have light for the further step in the problem; to wit, standardization of local or exchange rates. Of course, you will understand that by the standardization of local or exchange rates I do not mean  
15 to convey the impression that such rates for all places will be the same, but that the localities throughout the country will be classified according to the conditions prevailing in each, and then rates will be prescribed to fit the conditions of each class of locality.

Very truly yours,

(Signed) W. H. LAMAR,  
*Solicitor.*

*Special Appearance of the New England Telephone and Telegraph Company.*

Now comes the New England Telephone and Telegraph Company, named as the respondent in the above-entitled suit, and appears specially for the purpose of objecting to the jurisdiction of this Court over the parties hereto, or over the alleged cause of suit.

JAMES N. CLARK,  
By POWERS & HALL,  
*Attorneys,*  
101 Milk Street, Boston, Mass.

Filed February 5, 1919.

*Answer of the New England Telephone and Telegraph Company.*

Now comes the New England Telephone and Telegraph Company, named as the respondent in the above-entitled suit and hereinafter called the respondent, and without waiving its objection heretofore made to the jurisdiction of the Court over the parties hereto or over the alleged cause of action, but expressly relying thereon, for answer to the bill of complaint says as follows:

1. The respondent admits the allegations of fact contained in paragraph 1 of the bill of complaint, but expressly denies that the complainants have or possess any authority, power, or jurisdiction to bring this bill of complaint.



2. Answering the allegations contained in paragraph 2 of the bill of complaint the respondent admits that it is a corporation organized under the laws of the State of New York and having a usual place of business in this Commonwealth; and admits that for a long time prior to midnight on July 31, 1918, it had been a public-service corporation doing business in the Commonwealth as a foreign corporation

16      engaged in the business of transmitting intelligence within the Commonwealth by electricity by means of telephone lines, including the operation of all conveniences, appliances, instrumentalities, and equipment utilized in connection therewith and appertaining thereto; but except as in this paragraph of the answer expressly admitted, and except as otherwise stated in paragraph 3 of this answer, denies each and every allegation in said paragraph 2 of the bill of complaint contained, and especially denies in whole and in every part that it is or at any time since midnight of July 31, 1918, has been a public-service corporation doing business in the Commonwealth as a foreign corporation engaged in the business of transmitting intelligence within the Commonwealth by electricity by means of telephone lines, including the operation of all conveniences, appliances, instrumentalities, and equipment utilized in connection therewith and appertaining thereto.

3. Answering the allegations contained in paragraph 3 of the bill of complaint the respondent says that the Congress of the United States, by joint resolution on the 2d day of April, 1917, approved by the President of the United States on the 6th day of April, 1917, formally recognized that a state of war thrust upon the United States by the Imperial German Government existed between the two governments; that at all times since such state of war has existed and still exists; that after such state of war had been declared to exist as aforesaid a joint resolution, of which a copy is annexed to the bill of complaint as Exhibit A, was passed by the Congress of the United States, and on the 16th day of July, 1918, was approved by the President of the United States, and thereupon became and still is of full force and effect, to authorize the President of the United States in time of war to supervise or take possession and assume control of any telephone system or systems, or any part thereof, and to operate the same in such manner as might be needful or desirable for the duration of the war, and to provide just compensation therefor; that thereafter the President of the United States, in his official capacity as such President, by a proclamation, of which a copy, marked "A," is hereto attached and made a part hereof, duly issued by him on July 22, 1918, which proclamation is still in full force and effect and has not been in any respect revoked, cancelled, or modified by the President of the United States, or otherwise, under and by virtue of the powers vested in him by said joint resolution and by virtue of all other powers thereto him enabling, took possession and assumed control and supervision of each and every telephone system and every part thereof within the jurisdiction of the United States, including all equipment thereof and appurtenances thereto whatsoever and all materials and supplies, including the entire system

17      and property of every name and nature of the respondent, and directed that the supervision, possession, control



and operation of said telephone systems thereby by him undertaken should be exercised by and through the Postmaster-General of the United States, Albert S. Burleson, and that said Postmaster-General might perform the duties thereby and thereunder imposed upon him, so long and to such an extent and in such manner as said Postmaster-General should determine, through the owners, managers, boards of directors, receivers, officers, and employees of said telephone systems, and that, until and except so far as said Postmaster-General should from time to time by general or special orders otherwise provide, the owners, managers, boards of directors, receivers, officers, and employees of the various telephone systems should continue the operation thereof in the usual and ordinary course of business by said systems in the names of their respective companies, associations, organizations, owners, or managers, as the case might be, and that from and after twelve o'clock midnight on the 31st day of July, 1918, all telephone systems included in said order and proclamation should conclusively be deemed within the possession and control and under the supervision of said Postmaster-General without further act or notice; that on July 23, 1918, the said Postmaster-General, acting in his official capacity, by order No. 1744, of which a copy, marked "B," is hereto attached and made a part hereof, appointed a committee, of which the said Postmaster-General was and is chairman, for the governmental management, operation, and control of the telephone systems covered by the said proclamation, and that said appointment at all times since has been and still is in full force and effect; that pursuant to the terms and provisions of the said proclamation at midnight of July 31, 1918, supervision, possession, control, and operation of every telephone system and every part thereof within the jurisdiction of the United States, including all the system and property of the respondent, became vested in the President of the United States, and for that purpose and to that end every such telephone system, including the system of the respondent, passed into and within the possession and control and under the supervision of the said Postmaster-General; that at all times since the date last above mentioned said Postmaster-General has had and exercised and now has and exercises supervision, possession, control, and operation of said telephone systems, including the telephone system of the respondent; that on August 1, 1918, said Postmaster-General, acting in his official capacity, issued an order, No. 1783, of which a copy, marked "C," is hereto attached, and made a part hereof, declaring that pursuant to the

18      said proclamation of the President of the United States he had assumed possession, control, and supervision of the telephone systems of the United States, including the telephone system of the respondent, and directing that until further notice the telephone companies, including the respondent, should continue operation in the ordinary course of business through regular channels, and that all officers, operators, and employees of telephone companies, including the respondent, should continue in the performance of their present duties, reporting to the same officers as theretofore, and on the same terms of employment; that at all times since the date last above mentioned under, by virtue

of, and in compliance with, the authority and obligation granted and imposed in and by the aforesaid order No. 1783, the respondents' officers and employees have severally been and now are engaged in the operation of the respondent's telephone system solely as agents, representatives, and instrumentalities of the Government of the United States, acting through the President of the United States and the Postmaster-General, and not otherwise; that by and in consequence of the acts of the Government of the United States hereinabove set forth, the respondent has been divested of all its telephone system and of all its property of every name and description appertaining thereto, and of all power, management, and control of or over the same, except as to the legal title thereto, and subject to the provisions of said joint resolution relative to just compensation, until proclamation shall be made by the President of the United States of the exchange of ratifications of the treaty of peace, unless prior thereto, by order of the Postmaster-General pursuant to the provisions of said proclamation of the President of the United States issued on July 22, 1918, supervision, possession, control, or operation of the respondent's telephone system shall be relinquished in whole or in part to the respondent; that no order has been issued by the Postmaster-General, or otherwise, relinquishing to the respondent in whole or in part the supervision, possession, control, or operation of the respondent's telephone system assumed and exercised by the Government of the United States as aforesaid; that just compensation for the supervision, possession, control, and operation by the Government of the United States of the respondent's telephone system in an amount satisfactory to the respondent was duly determined by the President of the United States pursuant to the provisions of said joint resolution; that a proposal for such just compensation submitted in behalf of the respondent on October 4, 1918, to the Postmaster-General and accepted by him on October 5, 1918, by direction of the President of the United States, was ratified by the respondent on October 15, 1918; that at all times since said last-mentioned date said agreement for just compensation entered into by the respondent has been and is now in full force and effect; that said agreement for just compensation fixes and determines the entire compensation to be received by the respondent from midnight of July 31, 1918, to the end of the period of supervision, possession, control, or operation by the Government of the United States; that the amount of compensation fixed and determined by said agreement is not in any respect whatsoever, directly or indirectly, dependent upon, affected by, or related to the financial result of the operation of the respondent's telephone system or of any other telephone system during the period of control by the Government of the United States as aforesaid; that at all times since midnight of July 31, 1918, the respondent has had and now has, and under the aforesaid agreement for just compensation can and will have, no pecuniary interest in the revenues or disbursements or in the profits or losses connected with or resulting from the operation of the respondent's telephone system; that since the date last above mentioned, and until cessation of control by the Government of the United States as hereinabove

set forth, all revenues derived from telephone service rendered in connection with the respondent's telephone system under charges since said date or now in effect, or to be in effect hereafter, have been and will be collected, not in any way for the respondent's own account or benefit, but solely for the Government of the United States, and said revenues have been and will be the property of the Government of the United States, and in no way have been or will become the property of the respondent; and that except as in this paragraph of the answer expressly admitted the respondent denies each and every allegation in said paragraph 3 of the bill of complaint contained.

4. Answering the allegations contained in paragraph 4 of the bill of complaint the respondent says that on December 13, 1918, the Postmaster-General of the United States, acting in his official capacity, under and by virtue of the authority conferred upon him as hereinabove set forth, issued an order, No. 2495, providing that on and after January 21, 1919, the rates for toll service over all the telephone lines and systems under his operation and control as aforesaid, including the line and system of the respondent, should be computed and charged according to a standard schedule set forth in said order; that on December 20, 1918, the respondent mailed to the Secretary of the Public Service Commission a letter, of which a copy, marked "D," is hereto attached and made a part  
20 hereof, enclosing a printed copy of said order No. 2495, with which a printed cover sheet was combined, of both of which a copy, marked "E," is hereto attached and made a part hereof; that said letter and said copy of order No. 2495, with said cover sheet above described, were received by the complainants on December 21 1918; that said copy of order No. 2495, with said cover sheet, is the notice referred to in paragraph 4 of the bill of complaint; that the respondent expressly denies that on December 21, 1918, it filed with the Public Service Commission any notice except as in this paragraph of the answer set forth; that the respondent expressly denies that said copy of order No. 2495 was filed with the Public Service Commission under the provisions of St. 1913, c. 784, sec. 20; that said copy of order No. 2495 was filed by the respondent with the Public Service Commission for the information of said Public Service Commission and for no other purpose; that the respondent expressly denies that on December 21, 1918, it filed with the Public Service Commission notice that, effective on January 21, 1919, the respondent proposed to make certain changes in the telephone toll rates and practices to be charged and put into effect by the respondent in accordance with schedules filed together with such notice; that the respondent had and has no interest in, relation to, control over, or connection with the rates and charges fixed and prescribed in said order No. 2495, except as hereinabove set forth, and that its officers and employees have acted and are acting with reference thereto in all matters and in all respects as the agents and instrumentalities of the Government of the United States in the execution of and in compliance with said order of the Postmaster-General of the United States under the circumstances herein described, and not otherwise; that the respondent admits that on January 9,

1919, said Public Service Commission gave notice of a public hearing with reference to the schedules contained in said copy of order No. 2495, to be held on January 17, 1919, but expressly denies that the said Public Service Commission had power, authority, or jurisdiction under or pursuant to the provisions of section 21 of chapter 784 of the Acts of 1913, or otherwise, to take such action; that the respondent admits that a hearing was begun on said last-named date, that a representative of the respondent was present, that the hearing was adjourned to January 30, 1919, and that it was held on said last-named date; that the respondent expressly denies that its representative was fully heard at said time as to the reasonableness of said rates and changes; that at said time the respondent's representative confined himself to a denial of the jurisdiction of

21 the Public Service Commission in the premises, with the understanding between said Public Service Commission and said representative that if the jurisdiction of the Public Service Commission should be sustained by the Courts, either the Postmaster-General of the United States or the respondent if it should then be in private control, should be entitled without prejudice to a further and full hearing on the merits relative to the rates and changes contained in said order No. 2495; and that except as herein expressly admitted the respondent denies each and every allegation in said paragraph 4 of the bill of complaint contained.

5. Answering the allegation contained in paragraph 5 of the bill of complaint the respondent admits that on January 20, 1919, the complainants issued an order, of which a copy is annexed to the bill of complaint as Exhibit B; that a copy of said order was received by the respondent shortly after four o'clock on the afternoon of January 20, 1919; that on January 31, 1919, the complainants made a report and entered an order, of which report and order a copy is annexed to the bill of complaint as Exhibit C. The respondent expressly denies that said first-named order was an order issued in accordance with the provisions of said section 21, and expressly denies that the complainants had any authority, power, or jurisdiction under said statute, or otherwise, to issue said order, expressly denies that said first-named order had or has any legal effect whatever upon or with reference to the respondent or the Postmaster-General or the President of the United States or the Government of the United States, or any of them, or any person or corporation whatever, expressly denies that the complainants had any authority, power, or jurisdiction under said statute, or otherwise, to make or to enter said report or said last-named order, or either of them, and expressly denies that said report or said last-named order, or either of them, had or has any legal effect whatever upon or with reference to the respondent or the Postmaster-General or the President of the United States or the Government of the United States, or any of them, or any person or corporation whatever. Except as herein expressly admitted, the respondent denies each and every allegation in said paragraph 5 of the bill of complaint contained.

6. Answering the allegations contained in paragraph 6 of the bill of complaint the respondent expressly denies that on January

21, 1919, the respondent itself put into effect the rates stated in said proposed schedules and that the respondent itself is now proceeding to charge the same for all service rendered by it to the public covered by said schedules and that the respondent itself intends to continue to charge said rates. The respondent says that the rates made, established, and, on January 21, 1919, put into effect, were made, established and put into effect solely by the Government of the United States under the provisions of said order No. 2495, and not by the respondent, all as hereinabove set forth, and not otherwise; that the said charges for service are being made by the Government of the United States under the provisions of said order No. 2495 and not by the respondent, all as hereinabove set forth and not otherwise; that said service is being rendered by the Government of the United States through the instrumentality of the respondent's officers and employees and not by the respondent, all as hereinabove described; and that at all times stated in said paragraph 6 of the bill of complaint, now, and until control of the respondent's telephone system by the Government of the United States shall be duly terminated, the respondent has had, has, and will have, no determination of or control over rates charged and to be charged, and no discretion and power with respect thereto, other than to obey the lawful orders of the Postmaster-General of the United States. The respondent admits that it denies the jurisdiction of the complainants to enter said orders or in any other manner to fix or to determine the rates to be charged for telephone service furnished by the respondent's telephone system between points within this Commonwealth until control of the respondent's telephone system by the Government of the United States as hereinabove described shall have duly terminated, and that the respondent claims that said orders are null and void. Except as herein expressly admitted, the respondent denies each and every allegation in said paragraph 6 of the bill of complaint contained.

7. The respondent denies each and every allegation contained in paragraph 7 of the bill of complaint.

8. And further answering the bill of complaint the respondent says upon information and belief that supervision, possession, control, and operation of all telephone systems in the United States, including the telephone lines and system owned by the respondent, were taken and are still held and exercised by the Government of the United States, as hereinabove set forth, as a war measure and under the war powers of the Federal Government, to the end that all such telephone lines and systems within the boundaries of the United States might and should be operated by and as one coordinated and unified national system of wire communication during the period of the war and until the proclamation by the President of the United States of the exchange of the ratifications of the treaty of peace.

23 9. And further answering the bill of complaint the respondent says that all the telephones connected with the lines and system of the respondent, operated and managed by the Government of the United States as aforesaid, have interstate toll connec-



tions, including connections with all telephones of the so-called Bell system, and thereby have available at all times the means of long-distance telephonic communication with the United States at large, and that the rates of toll service prescribed by the Postmaster-General in his said order No. 2495 directly affect and apply to both interstate and intrastate telephone messages and the users thereof.

10. And further answering the bill of complaint the respondent says on information and belief that the action of the President of the United States and of the Postmaster-General of the United States in making and establishing the rates prescribed in said order No. 2495 involved the exercise of judgment and discretion during a war emergency and in carrying out the provisions of a war measure of the Congress of the United States in determining what was needful or desirable for the national security, defense, and welfare in operating the said telephone lines and systems, including those of the respondent, for the duration of the war, and that such exercise of judgment and discretion, and the action taken by the United States and by the respondent as its agent and representative as a result thereof, ought not to be and is not subject to inquiry, review, reversal, or control by this court.

11. And further answering the bill of complaint the respondent says that the United States, the President of the United States, and the Postmaster-General of the United States are, or some one or more of them is, necessary parties or party respondent in this proceeding, and that there is, therefore, a defect of parties respondent in this proceeding.

12. And further answering the bill of complaint the respondent says that it has no personal or corporate interest in the subject-matter of this proceeding; that, though in form against the respondent, this proceeding is in substance and effect against the United States; that the relief prayed for against this respondent will, if granted, in effect restrain the United States, and the President of the United States, and will interfere with and materially affect them, and each of them, in the supervision, possession, control, and operation of the telegraph and telephone lines and systems within the jurisdiction of the United States, including the supervision, possession, control, and operation of the telephone lines and system owned by the respondent; that neither the United States nor the President of

24 the United States nor the Postmaster-General of the United States has consented to be sued or proceeded against in this proceeding nor can be subjected to the judgment, order, decree, or writ sought in this proceeding; and that consequently this Court has no jurisdiction in this proceeding over the United States or the President of the United States or the Postmaster-General of the United States, or over the subject-matter hereof, nor can any effective relief be granted to the complainants herein.

13. And further answering the bill of complaint the respondent says that the facts and subject-matter presented by the bill of complaint, and the issues herein, draw in question a law and statute of the United States and an authority exercised thereunder by the President of the United States and by the Postmaster-General of the United States and by this respondent, and each of them, under

and pursuant to the express orders, commands, and requirements of the United States, and involve a right, privilege, and immunity claimed by them, and each of them, under the Constitution, laws, statutes, and authority of the United States.

14. And further answering the bill of complaint the respondent says that in view of the allegations of this answer it is not now, and at no time since midnight of July 31, 1918, has been, a common carrier as defined in chapter 784 of the Acts of 1913, and amendments thereof and additions thereto, or otherwise a corporation furnishing for public use within the Commonwealth any service within the jurisdiction, or subject to the supervision, of the complainants.

15. And further answering the bill of complaint the respondent says that there are not now existing any laws, statutes, or lawful police regulations of the Commonwealth of Massachusetts affecting, regulating, or controlling the supervision, possession, control, operation, or management of telephone lines and property within said Commonwealth by the United States, or any Federal agency, or by the respondent as an instrumentality of the Government of the United States under the aforesaid joint resolution, proclamation of the President of the United States, and orders of the Postmaster-General of the United States.

16. And further answering the bill of complaint the respondent says that the complainants have not therein alleged facts sufficient to constitute a cause of action, or made or stated such a case as entitles them in a Court of equity to any relief as to the matters contained in said bill of complaint, or any such matters.

25       Wherefore the respondent prays that the bill of complaint be dismissed, with costs.

NEW ENGLAND TELEPHONE AND  
TELEGRAPH COMPANY,  
By POWERS & HALL,  
JAMES N. CLARK,

*Attorneys.*

Filed February 11, 1919.

A.

By the President of the United States of America.

*A Proclamation.*

Whereas the Congress of the United States, in the exercise of the constitutional authority vested in them, by joint resolution of the Senate and House of Representatives, bearing date July 16, 1918, resolved:

That the President, during the continuance of the present war, is authorized and empowered, whenever he shall deem it necessary for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereon, and to operate the same in such manner as may be needful or desirable for the duration



of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: Provided, that just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid 75 per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum will make up such amount as will be just compensation therefor, in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code: Provided, further, that nothing in this act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications or the issue of stocks and bonds by such system or systems.

And whereas it is deemed necessary for the national security and defense to supervise and to take possession and assume control of all telegraph and telephone systems and to operate the same in such manner as may be needful or desirable;

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolution, and by virtue of all other powers thereto me enabling, do hereby take possession and assume control and supervision of each and every telegraph and telephone system and every part thereof, within the jurisdiction of the United States, including all equipment thereof and appurtenances thereto whatsoever and all materials and supplies.

It is hereby directed that the supervision, possession, control, and operation of such telegraph and telephone systems hereby by me undertaken shall be exercised by and through the Postmaster General, Albert S. Burleson. Said Postmaster General may perform the duties hereby and hereunder imposed upon him, so long and to such extent and in such manner as he shall determine, through the owners, managers, boards of directors, receivers, officers, and employees of said telegraph and telephone systems.

Until and except so far as said Postmaster General shall from time to time by general or special orders otherwise provide, the owners, managers, boards of directors, receivers, officers and employees of the various telegraph and telephone systems shall continue the operation thereof in the usual and ordinary course of the business of said systems, in the names of their respective companies, associations, organizations, owners, or managers, as the case may be.

Regular dividends hitherto declared, and maturing interest upon bonds, debentures, and other obligations may be paid in due course; and such regular dividends and interest may continue to be paid until and unless the said Postmaster General shall, from time to time, otherwise by general or special orders determine, and, subject to the approval of said Postmaster General, the various telegraph and telephone systems may determine upon and arrange for the renewal and extension of maturing obligations.

By the subsequent order of said Postmaster General supervision, possession, control, or operation, may be relinquished in whole or in part to the owners thereof of any telegraph or telephone system or any part thereof supervision, possession, control, or operation of which is hereby assumed or which may be subsequently assumed in whole or in part hereunder.

27 From and after 12 o'clock midnight on the 31st day of July, 1918, all telegraph and telephone systems included in this order and proclamation shall conclusively be deemed within the possession and control and under the supervision of said Postmaster General without further act or notice.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done by the President, in the District of Columbia, this 22nd day of July, in the year of our Lord 1918, and of the independence of the United States the 143d.

[SEAL.]

WOODROW WILSON.

By the President:

FRANK L. POLK,

*Acting Secretary of State.*

B.

OFFICE OF THE POSTMASTER GENERAL,

WASHINGTON, July 23, 1918.

*Order No. 1744.*

John C. Koons, First Assistant Postmaster General; David J. Lewis, Commissioner, United States Tariff Commission; and William H. Lamar, Solicitor for the Post Office Department, are hereby appointed a committee for the Governmental management, operation and control of the telegraph and telephone systems covered by the Proclamation of the President dated July 22, 1918, of which committee the Postmaster General shall be chairman.

A. S. BURLESON,

*Postmaster General.*

C.

Telegraph and Telephone Service.

Bullein No. 2.

OFFICE OF THE POSTMASTER GENERAL.

WASHINGTON, Aug. 1, 1918.

*Order No. 1783.*

Pursuant to the proclamation of the President of the United States, I have assumed possession, control and supervision of the

28 telegraph and telephone systems of the United States. This proclamation has already been published and the officers, operators and employees of the various telegraph and telephone companies are acquainted with its terms.

Until further notice the telegraph and telephone companies shall continue operation in the ordinary course of business through regular channels. Regular dividends heretofore declared and maturing interest on bonds, debentures and other obligations may be paid in due course, and the companies may renew or extend their maturing obligations unless otherwise ordered by the Postmaster General. All officers, operators and employees of the telegraph and telephone companies will continue in the performance of their present duties, reporting to the same officers as heretofore and on the same terms of employment. Should any officer, operator or employee desire to leave the service, he should give notice as heretofore to the proper officer, so that there may be no interruption or impairment of the service to the public.

I earnestly request the loyal cooperation of all officers, operators and employees and the public, in order that the service rendered shall not only be maintained at a high standard, but improved wherever possible. It is the purpose to coordinate and unify these services so that they may be operated as a national system with due regard to the interests of the public and the owners of the properties.

No changes will be made until after the most careful consideration of all the facts. When deemed advisable to make changes, due announcement will be made.

A. S. BURLESON,  
*Postmaster General.*

*D.*

Mr. Andrew A. Highlands, Secretary, Public Service Commission, Commonwealth of Massachusetts, No. 1 Beacon Street, Boston, Mass.

DEAR SIR: We are sending you herewith, in duplicate, basic toll rate schedule No. 1, cancelling and superseding the basic toll rate schedule filed with your Commission on October 18, 1916. This basic schedule is issued in accordance with Telegraph and Telephone Bulletin No. 22, Order No. 2495, of the Postmaster General of the United States, to become effective January 21, 1919.

Will you please acknowledge receipt of this schedule by returning the duplicate copy after stamping thereon the date of receipt?

Respectfully submitted,

NEW ENGLAND TELEPHONE AND  
TELEGRAPH COMPANY,

(Signed) C. F. A. SIEDHOF,

*Secretary.*

T/J.

Enclosure.

*E.*

Massachusetts Public Service Commission.

*Toll Rate Schedule—No. 1.*

(Cancelling and superseding basic toll rate schedule filed October 18, 1916.)

New England Telephone and Telegraph Company.

Basic Toll Rate Schedule.

Issued in accordance with Telegraph and Telephone Bulletin No. 22, Order No. 2495 of the Postmaster General of the United States.

Effective in the Commonwealth of Massachusetts.

Issued December 21, 1918.

Effective January 21, 1919.

[Remainder of Exhibit E is omitted by agreement of counsel.]

\_\_\_\_\_  
*Clerk.*

Copy.

Attest.

30 [Endorsed:] No. —. Eq. Public Service Commission  
v. New England Telephone & Telegraph Co. Reservation,  
&c. Suffolk County.

31 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth at Boston.

MARCH 22, 1919.

In the case of Public Service Commission vs. New England Telephone & Telegraph Company, pending in the Supreme Judicial Court for the County of Suffolk:

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz.,—  
Petition dismissed.

By the court,

C. H. COOPER,  
*Clerk.*

March 22, 1919.

Copy.

Attest:

JOHN F. CRONIN,  
*Clerk.*

March 28, 1919.

32 *Brief Statement of the Grounds and Reasons of the Decision.*

The reasons of the decision are set forth at length in the opinion filed herewith, to which reference is made.

33 [Endorsed:] 30,455 Eq. No. 1279. Supreme Judicial Court for the Commonwealth. Rescript, Suffolk County. Public Service Commission vs. New England Telephone & Telegraph Company. 7. Suffolk, S. S. Supreme Judicial Court. Filed Mar. 22, 1919. John F. Cronin, Clerk.

34 COMMONWEALTH OF MASSACHUSETTS:  
*Suffolk, ss:*

Supreme Judicial Court.

PUBLIC SERVICE COMMISSION

vs.

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY.

*Final Decree.*

This cause came on to be heard after a rescript from the full Court, and upon consideration thereof, it appearing that the United States is interested therein as a necessary party and that it is thus in substance and effect a suit against the United States, it is Ordered, Adjudged and Decreed that the bill be, and hereby is, dismissed as being for that reason not within the jurisdiction of the court.

By the Court,

JOHN F. CRONIN,  
*Clerk.*

March 28, 1919.

March 28, 1919.

A true copy.

Attest:

JOHN F. CRONIN,  
*Clerk.*

35 COMMONWEALTH OF MASSACHUSETTS:  
*Suffolk, ss:*

Supreme Judicial Court.

I, John F. Cronin, Clerk of the Supreme Judicial Court within and for the County of Suffolk and Commonwealth of Massachusetts, do hereby certify that the foregoing papers are an exemplification of the record in the case of Public Service Commission, Plaintiff vs. New England Telephone and Telegraph Company, Defendant in said Supreme Judicial Court determined, and attached thereto, and transmitted with said record, is a copy of the opinion of the Supreme Judicial Court recorded therein, attested by the Reporter of Decisions in said Commonwealth.

In testimony whereof I have hereunto set my hand and affixed the seal of this Court at Boston this first day of April, in the year of our Lord one thousand nine hundred and nineteen.

[SEAL.]

JOHN F. CRONIN,  
*Clerk.*

36 COMMONWEALTH OF MASSACHUSETTS.

Boston, March 29, 1919.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of Public Service Commission vs. New England Tel. & Tel. Company, decided on the 22d day of March, 1919.

HENRY WALTON SWIFT,  
*Reporter of Decision.*

37 Rugg, C. J.:

This is a petition in equity brought under St. 1913, c. 784, s. 28, to enforce by injunction an order of the public service commission dated January 20, 1919, relative to toll telephone rates within the Commonwealth. The case comes before us by reservation for determination upon the bill and answer. The case must be considered upon the footing that the averments of the answer are true where in conflict with those of the bill and that the allegations of the bill are true only so far as admitted or not at variance with facts well pleaded in the answer. Perkins v. Nichols, 11 Allen, 542. American Carpet Lining Co. v. Chipman, 146 Mass. 385. The pertinent facts thus ascertained are that prior to July 3, 1918, the defendant was a corporation operating within the Commonwealth an extensive system for the transmission of intelligence by telephone. On July 16, 1918, during the continuance of the great war the Congress of the United States in the exercise of its war powers passed a resolution empowering the President during the war "to supervise or to take possession and assume control of any telegraph, tele-

phone, marine cable or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war." The President exercised the power thus conferred by his proclamation of July 22, 1918. Its relevant provisions were that "I \* \* \* do hereby take possession and assume control and supervision of each and every telegraph and telephone system, and every part thereof, within the jurisdiction of the United States, including all equipment thereof and appurtenances thereto whatsoever and all materials and supplies. It is hereby directed that the supervision, possession, control, and operation of such telegraph and telephone systems hereby by me undertaken shall be exercised by and through the Postmaster General, Albert S. Burleson. Said Postmaster General may perform the duties hereby and hereunder imposed upon him, so long and to such extent and in such manner as he shall determine, through the owners, managers, boards of directors, receivers, officers, and employees of said telegraph and telephone systems. Until and except so far as said Postmaster General shall from time to time by general or special orders otherwise provide, the owners, managers, boards of directors, receivers, officers and employees of the various telegraph and telephone systems shall continue the operation thereof in the usual and ordinary course of the business of said systems, in the

names of their respective companies, associations, organizations, owners, or managers, as the case may be. \* \* \*

From and after 12 o'clock midnight on the 31st day of July, 1918, all telegraph and telephone systems included in this order and proclamation shall conclusively be deemed within the possession and control and under the supervision of said Postmaster General without further act or notice." On August 1, 1918, the postmaster general issued a bulletin wherein he declared, "Pursuant to the proclamation of the President of the United States, I have assumed possession, control and supervision of the telegraph and telephone systems of the United States. \* \* \*

Until further notice the telegraph and telephone companies shall continue operation in the ordinary course of business through regular channels. Regular dividends heretofore declared and maturing interest on bonds, debentures and other obligations may be paid in due course, and the companies may renew or extend their maturing obligations unless otherwise ordered by the Postmaster General. All officers, operators and employees of the telegraph and telephone companies will continue in the performance of their present duties, reporting to the same officers as heretofore and on the same terms of employment." The proclamation of the President and the bulletin of the postmaster general have been put into effect and operation according to their terms and are still in force unrevoked and unmodified. The answer avers further that pursuant to this proclamation and bulletin the

entire telephone system of the defendant including all its equipment, appurtenances, material, supplies and property of every description has been taken possession of by the government of the United States and is vested in the President and is controlled and operated exclusively by him, and that in consequence



thereof the defendant has been divested of all its telephone system and all its property of every kind thereto appertaining and of all power, management and control over the same and retains only the legal title thereto. Just compensation for the supervision, possession, control and operation by the government of the United States of the defendant's telephone system in an amount satisfactory to it has been determined upon and awarded to and accepted by it, and an agreement has been entered into whereby the entire compensation to be received by it from July 31, 1918, to the end of the period of governmental control has been fixed and the amount of such compensation is not in any respect dependent upon the financial result of the operation of its system by the United States government and it has no pecuniary interest in the profits or losses resulting from such operation. The resolution of Congress of July 16, 1918, conferred ample power upon the President to determine the amount of just compensation to be paid to the owner for such possession, supervision, control and operation.

The defendant has pleaded that the United States, the President, the postmaster general or some one or more of them, are necessary parties to this proceeding, and further that the proceeding is in substance against the United States and that the relief prayed for,

41 which relates exclusively to toll rates for intrastate telephone service, will in effect restrain the United States in its control, possession and operation of the telephone system belonging to the defendant and formerly operated by it; and that it has not been since July 31, 1918, a common carrier or otherwise furnishing as a corporation any service for public use so as to be subject to the jurisdiction of the public service commission under St., 1913, c. 784.

It is conceded by both parties hereto that the resolution of Congress of July 16, 1918, was a constitutional exercise of the war powers of the federal government and that the proclamation of the President and the bulletin of the postmaster general have been pursuant thereto and are operative according to their terms.

The order of the public service commission here sought to be enforced purported to suspend the taking effect of substantial increases in the rates of toll charges to users of the telephone between places within the Commonwealth, in accordance with a "basic toll rate schedule" issued by an order of the postmaster general of the United States.

It seems manifest from this narration of facts and recital of official documents that the United States is vitally interested and is alone concerned in the toll rates to be collected for telephone service over the system belonging to the defendant. The resolution of Congress of July 16, 1918, is most comprehensive in scope. It authorized the President to take full, complete, absolute and unqualified possession of the defendant's system. It seems to us

42 that the proclamation of the President according to its true construction was co-extensive in its sweep with the power conferred by the resolution. By express words the President took possession and assumed control of every part of each and every telephone system including all equipment and appurtenances and all materials and supplies. It would be difficult to employ words of

broader reach or wider embrace than those in which the proclamation is couched. The phrase of the bulletin of the postmaster general is equally comprehensive in its grasp. The effect of these documents was not a mere public supervision of an operation by private owners. It was a complete assumption of absolute and complete possession and control to the exclusion of every private interest. No distinction is made by their terms between interstate service and intrastate service. Both alike are taken into the possession of the United States. Powers so extensive as were thus assumed can be exercised only through various governmental agencies. But the right and power of the government are paramount and admit of no associates. In execution of the authority conferred by the resolution of July 16, 1918, just compensation for that which has been taken from the defendant has been awarded by the President and accepted by the defendant. Its interest has come to an end as to the matter of charges to be exacted for the service rendered by the United States for the use of the property of the defendant. The government has utterly supplanted the defendant in this field. The matter of rates is

43 now the sole financial affair of the United States.

The reasonableness and amount of the rates to be charged for intrastate toll telephone service are of direct concern to the United States. As was said in *Wells v. Roper*, 246 U. S., 335, at 337, "that the interests of the Government are so directly involved as to make the United States a necessary party and therefore to be considered as in effect a party, although not named in the bill, is entirely plain." In *Louisiana v. McAdoo*, 234 U. S., 627, at 629 are found these words: "That the United States is not named on the record as a party is true. But the question whether it is in legal effect a party to the controversy is not always determined by the fact that it is not named as a party on the record, but by the effect of the judgment or decree which can here be rendered. *Minnesota v. Hitchcock*, 185 U. S., 373, 387." These statements but summarize the effect of earlier and exhaustive discussions of the principles applicable to states of facts so similar to those presented in the case at bar as to be indistinguishable. *Belknap v. Schild*, 161 U. S. 10, and cases there reviewed by Mr. Justice Gray. *Louisiana v. Garfield*, 211 U. S. 70, 77. *Oregon v. Hitchcock*, 202 U. S. 60. *Naganab v. Hitchcock*, 202 U. S., 473. The circumstance that the United States is not the owner of the system of the defendant but only rightfully in possession of it with the right to collect reasonable tolls

44 is immaterial in this connection. "It has a property, a right in rem \* \* \* which, though less extensive than absolute ownership, has the same incident of a right to use." *International Postal Supply Co. v. Bruce*, 194 U. S., 601, 606.

We think the case at bar is distinguishable from *Kaufman v. Lee*, 106 U. S. 196, *Tindal v. Wesley*, 167 U. S. 204, *School of Magnetic Healing v. McAnnulty*, 187 U. S. 94, *Philadelphia Co. v. Stimson*, 223 U. S. 605, and similar cases where relief was granted against officers of the United States acting outside of their authority. There is nothing on this record to indicate that the defendant, if and so far as it is an agency of the federal government, upon which we express no opinion, is exceeding the limits of power conferred by the resolution, proclamation and bulletin.

It is a fundamental principle of law that "The United States, like all sovereigns, cannot be impleaded in a judicial tribunal, except so far as they have consented to be sued." *Belknap v. Schild*, 161 U. S. 10, 16. *McArthur Bros. Co. v. Commonwealth*, 197 Mass. 137. We are aware of no statute whereby the United States has consented either to become a party to rate fixing proceedings before the public service commission or before this court under St. 1913, c. 784. No such statute has been called to our attention.

It is the contention of the attorney general in behalf of the public service commission that the resolution of Congress of July 16, 1918, reserved to the states the right to regulate intrastate rates to the same extent as that power existed before federal control. That  
 45 contention is founded upon the final clause of the resolution, which is in these words: "Provided further, That nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such system or systems." That proviso does not seem to us reasonably Government communications, or the issue of stocks and bonds by such system or systems." That proviso does not seem to us reasonably susceptible of being stretched by implication to include a consent to be impleaded in the state courts in such a proceeding as this. Such consent is not commonly inferable from such remote and equivocal phrase having direct and adequate reference to another matter. *Troy & Greenfield Railroad v. Commonwealth*, 127 Mass. 43. Therefore it appears to us unnecessary to consider or discuss the merits of the question whether the proviso of the resolution of July 16, 1918, under its reservation of "lawful police regulations of the several States" "justifies rate regulation by a State in the exercise of its police power," *Union Dry Goods Co. v. Georgia Public Service Corporation*, 248 U. S. 372, 375, because we do not reach it. As was said by Mr. Justice Holmes in *Goldberg v. Daniels*, 231 U. S. 218, 221, 222, "There is another that comes before it in point of logic. The United States is \* \* \* in possession. \* \* \* It cannot be interefered with behind its back and as it cannot be made a party, this suit must fail."

Petition dismissed.

46 & 47 [Endorsed:] Public Service Commission vs. N. E. Tel. & Tel. Co. Certified Copy of the Opinion of the Supreme Judicial Court.

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Judicial Court of the State of Massachusetts, Greeting:

Being informed that there is now pending before you a suit in which Frederick J. Macleod and Everett E. Stone, constituting The Public Service Commission of Massachusetts, are complainants, and New England Telephone & Telegraph Company is defendant, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Judicial Court and removed into the Supreme Court of the United States,

Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-first day of April, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,

*Clerk of the Supreme Court of the United States.*

[Endorsed:] File No. 27,043. Supreme Court of the United States, No. 957, October Term, 1918. Frederick J. Macleod et al., constituting The Public Service Commission of Massachusetts, vs. New England Telephone & Telegraph Company. Writ of Certiorari.

Commonwealth of Massachusetts.

I, Arthur P. Rugg, Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts, do certify that John F. Cronin, Esquire, whose signature is affixed to the paper hereto annexed, is Clerk of said Court, holden at Boston, in and for the County of Suffolk, in said Commonwealth, and hath the keeping of all the ancient files, records, and proceedings of said Court throughout the Commonwealth, down to the first day of August A. D. 1797, as well as of the files, records, and proceedings of said Court holden as aforesaid, for said County of Suffolk, subsequent to that time; and is, by law, the proper person to make out and to certify copies of all the records and proceedings of the said Supreme Judicial Court previous to the said first day of August A. D. 1797, as well as of all records and proceedings of the said Court, holden as aforesaid, for the said County of Suffolk, subsequent to that time; and that full faith and credit is and ought to be given to his acts and attestations, done as aforesaid, and that his attestation to the paper hereunto annexed is in due form.

In testimony whereof, I have hereunto set my hand, and caused the seal of said Court to be hereunto affixed, this twenty-sixth day of April in the year one thousand nine hundred and nineteen.

[SEAL.]

ARTHUR P. RUGG.

COMMONWEALTH OF MASSACHUSETTS,  
*Suffolk, ss:*

Supreme Judicial Court.

I, John F. Cronin, Clerk of said Court, hereby certify that the paper attached hereto is a true copy of a Stipulation this day filed in this Court in the case of Frederick J. Macleod, et al., constituting the Public Service Commission of Massachusetts, vs. New England Telephone and Telegraph Company.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this twenty-sixth day of April, A. D. 1919.

[SEAL.]

JOHN F. CRONIN, *Clerk.*

[Endorsed:] No. —. Frederick J. Macleod, et al., constituting the Public Service Commission of Mass., v. New England Telephone & Telegraph Company. Certificate.

COMMONWEALTH OF MASSACHUSETTS,  
*Suffolk, ss:*

Supreme Judicial Court.

PUBLIC SERVICE COMMISSION

v.

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY.

*Stipulation.*

Whereas, in the above-entitled case, a writ of certiorari has been granted by the Supreme Court of the United States for the review by that court of the record and proceedings herein, it is agreed by the parties that the certified transcript of the record on file in the Supreme Court of the United States in connection with the petition for certiorari filed in that court may be taken as the return of the justices of this court to said writ of certiorari.

WM. HAROLD HITCHCOCK,  
*Assistant Attorney-General.*  
POWERS & HALL,  
*Attorneys for Respondent.*

A true Copy.

Attest:

[SEAL.] JOHN F. CRONIN, *Clerk.*

April 26, 1919.

[Endorsed:] File No. 27,043. Supreme Court U. S. October Term, 1918. Term No. 957. Frederick J. Macleod et al., etc., Petitioners, vs. New England Telephone & Telegraph Company. Writ of certiorari and return. Filed April 28, 1919.

FILED

APR 14 1919

JAMES D. MAHER,  
CLERK.

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**Supreme Court of the United States**

OCTOBER TERM, 1918

No. 957

**FREDERICK J. MACLEOD AND EVERETT E. STONE**

**CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MASSACHUSETTS**

v.

**NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY**

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**MOTION TO ADVANCE**

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**HENRY C. ATTWILL**

*Attorney-General*

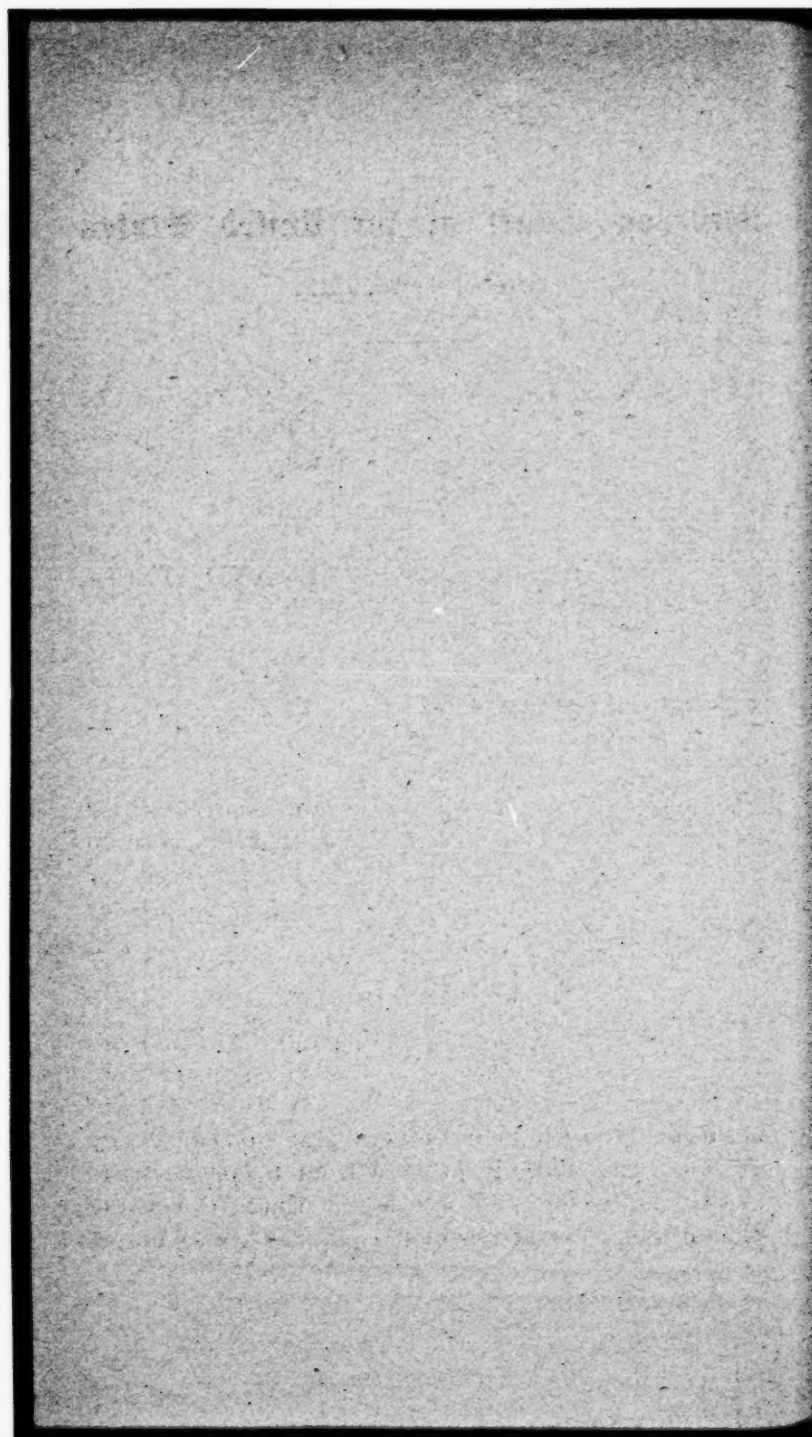
**WM. HAROLD HITCHCOCK**

*Assistant Attorney-General*

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# Supreme Court of the United States

October Term, 1918.

No. 957.

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FREDERICK J. MACLEOD AND EVERETT E.  
STONE, CONSTITUTING THE PUBLIC SERVICE  
COMMISSION OF MASSACHUSETTS,

*v.*

NEW ENGLAND TELEPHONE AND TELE-  
GRAPH COMPANY.

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## MOTION TO ADVANCE.

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Now come the petitioners in the above-entitled cause and move that, in the event that the petition for certiorari is granted, the case be advanced for hearing, and, if possible, be heard during the present term of the court.

## REASONS FOR MOTION.

This case involves the validity of all intrastate telephone toll rates that are now being charged to telephone users in Massachusetts. If these rates are illegal, as the petitioners contend, large sums of money are now being illegally exacted from telephone users in that state for such service. Owing to existing Federal control of the telephone systems of the country,

these sums are now being received by the respondent solely for the account of the United States. No provision has been made for refunding such payments, if they are held to be illegal, and in that event the members of the public who are now being required to make these payments will have no adequate remedy for their recovery. Therefore, any delay in the determination of the issues here involved will be a serious detriment to a very large number of the citizens of Massachusetts.

Though the case at bar involves only rates in Massachusetts, the same rates have been put in force throughout the country and the questions here involved arise in every other state which has established governmental regulation of telephone rates. We are informed that in at least twenty-five of the states suits have been brought, in state or in federal courts, to contest the validity of these rates, and that many of these suits are still pending. Thus, the telephone users of the entire country are interested in the prompt determination of these matters to the same extent as are the citizens of Massachusetts.

Even though governmental control of the telephone systems of the country should cease in the near future, the questions raised in this case will not become moot. If the rates now in question are legal they will remain still in force in Massachusetts until the Public Service Commission has, by full investigation, determined that they are unreasonable and ordered the establishment of a new schedule of rates. If these rates are illegal, the respondent must at once cease to charge them upon the resumption by it of independent control

of its system. If it does not do so, the Public Service Commission will plainly then be warranted in ordering such rates cancelled forthwith without investigation as to their reasonableness. Similar conditions will prevail in many other states; great confusion and much litigation is likely to result from such a situation. It is thus in any event greatly in the interest of the telephone users and the telephone companies of the country that the legality of these rates be determined as speedily as is consistent with the other public duties of this court.

FREDERICK J. MACLEOD,  
EVERETT E. STONE,

*Public Service Commission of Massachusetts.*

By HENRY C. ATTWILL,

*Attorney-General.*

WM. HAROLD HITCHCOCK,

*Assistant Attorney-General.*

The New England Telephone and Telegraph Company acknowledges service of a copy of the above motion to be presented on April 14, 1919, waives further notice thereof, and consents to its presentation upon that date.

JAMES N. CLARK,

*Attorney for Respondent.*